

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO.30 OF 2017

VINCENT KIPROTICH KOECH.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Appeal From original conviction and sentence in Criminal Case No.1075 of 2014 of the Principal Magistrate's Court at Kilgoris by Munyendo Sitati – Resident Magistrate)

JUDGMENT

1. Vincent Kiprotich Koech was convicted of the offence of “Indecent Act with a Child contrary to Section 11 (1) of the Sexual Offences Act”. He was sentenced to serve 10 years imprisonment. His appeal is against the sentence he seeks to have it reduced. He filed amended grounds of appeal on the 27th of September 2018. In it he gives his mitigation and seeks to have the sentence reduced.
2. The appellant was charged with, “Attempted defilement of a girl contrary to Section 9 (1) (2) of the Sexual Offences Act no.3 of 2006”. The particulars of the offence are that, “On the 3rd day of August 2014 at around 02.00am in Transmara West Sub County intentionally attempted to cause his penis to penetrate the vagina of L C K a girl of fifteen (15) years old. The appellant was also charged with an alternative charge of, Indecent Act with a girl contrary to section 11 (1) of the Sexual Offences Act No. 3 of 2006. The particulars of the offence are that, “On the 3rd day of August 2014 at around 02.00am in Transmara West Sub County intentionally attempted to cause his penis to come into contact with the vagina of L C K a girl of fifteen (15) years old.
3. The prosecution evidence was that on the on the 2/8/2014 the complainant Pw1 was on her way home at 10pm when she met the appellant. He asked her to follow him to his house she did so. Whilst in his house he touched her breasts and her private parts using his penis. She stood up and asked him to leave him. Her father arrived at the appellant's home. Pw2 and Pw3 went to the appellant's home and found Pw1 inside his house. Pw1 was 15 years old, this was confirmed by Pw5 who carried out an assessment on Pw1. Pw4 the clinical officer who examined Pw1 on the 4/8/2014 she observed that Pw1's genitalia was normal, the hymen was intact, there was no bruises and her conclusion was that there was no penetration and it was possibly a case of attempted rape. Pw6 was the arresting officer. The accused gave an unsworn statement in his defense. He stated that he is barber, he does not recall the charge against him. He does not understand the complainant made on the 3/8/2014. That he prays that the court evaluates how he was arrested. That the girl was arrested on the road. He was assaulted by many people. He did not question them due to fear. He was told to keep quiet or he would be beaten. He did not know anything with regard to the case. He boarded the OCPD's vehicle.
4. The prosecution adduced sufficient evidence to show that the complainant a girl aged 15 years was found inside the appellant's house. Her evidence was that he touched her breast and her private parts using his penis. The appellant committed indecent acts with a child aged 15 years who he led to his house and was found in his house. The trial court's finding was proper the conviction was proper. The appeal is on sentence. Section 11(1) of the Sexual Offences Act provides that, “**Any person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and is liable upon conviction to imprisonment for a term of not less than ten years**”. The appellant was sentenced to 10 years which is the minimum sentence as provided in law. My discretion is constrained as the sentence imposed by the trial court was a lawful sentence and this court has no legal authority to set it aside. The appeal is dismissed. The conviction and sentence are upheld.

Dated signed and delivered at Kisii this 16th day of November 2018.

R.E OUGO

JUDGE

In the presence of;

Appellant in person

Mr. Otieno for State

Ms. Rael - Court Clerk